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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/402,059	02/14/2000	MARIA RAIDEL	KCC-13368.10	5484

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EXAMINER

WEBB, JAMISUE A

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/402,059

Applicant(s)

RAIDEL ET AL.

Examiner

Jamius A. Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 45-111 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45-49, 57-86 and 94-111 is/are rejected.
- 7) ☒ Claim(s) 50-56 and 87-93 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. Due to the lack of an English translation the German reference 1 907 914 presented in the information disclosure statement filed 5/3/00 is considered only in as much as the description given in the specification.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 45-49, 57-59, 62, 68-69, 71, 73-75, 82-86, 94-96, 12-105, and 107-111 rejected under 35 U.S.C. 102(b) as being anticipated by Kellenberger (EP 0 339 461).
4. With respect to Claims 45, 46, 57, 59, 62, 68, 69, 82, 83, 94, and 102: Kellenberger discloses the use of an absorbent article (10) with a topsheet (14), a backsheet (12) and an absorbent body located there between (16). Kellenberger teaches the use of the core comprising superabsorbent particles (20) that are disposed in a fibrous matrix, but are free floating within (are not bound to the fibrous matrix) (see Figures 2-4). It is the examiners position that if the superabsorbent particles are not bound to the fibers, then they are flowable particles, and are capable of remaining able to flow after contact with liquid.

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5. With respect to Claims 47-49, and 84-86: Kellenberger discloses the particles being essentially spherical (see figures 1-4), and have a diameter of at least 200 microns (page 6, lines 37-41)
6. With respect to Claims 58 and 95: see page 5, line 6.
7. With respect to Claim 71: Kellenberger discloses the use of wood pulp material, which is a cellulose material (page 4, lines 40-47).
8. With respect to Claims 73-75: see page 5, lines 10-13.
9. With respect to Claim 96: Kellenberger discloses the length and width of the absorbent core, being less than the article (see Figure 1).
10. With respect to Claims 103-105 and 107-108: Kellenberger discloses the invention is used for disposable diapers, adult incontinence pads, sanitary napkins and the like (page 2, lines 5-6). A sanitary napkin is a feminine hygiene article, and furthermore the examiner considers a sanitary napkin to be a panty liner, due to the fact that it lines and protects the panty.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 60, 61, 76, 78, and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellenberger (EP 0 339 461) in view of LeMahieu et al (5,904,672).

14. Kellenberger, as disclosed for Claims 45 and 62 above, fails to teach the use of a care substance in the core. LeMahieu discloses the use of treated tissues that surround the core and are between the outer layers and the core, are treated with a substance that contains aloe vera (column 23, line 45 to column 24, line 7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the core of Kellenberger, be wrapped with the tissue layers, as disclosed by LeMahieu, in order maintain the integrity of fibrous absorbents or transport liquids. (see LeMahieu, column 7)

15. Claims 63 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellenberger (EP 0 336 461) in view of Luceri (5,807,365).

16. With respect to Claim 63: Kellenberger, as disclosed above for claim 62, fails to teach that the absorbent core is adhesively bonded to backsheet. Luceri discloses the core and the backsheet being adhesively bonded to each other (column 6, lines 20-29). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the core and the backsheet of Kellenberger, be attached to one another using adhesives, as disclosed by Luceri, in order to produce improved contact between the absorbent layer and the backsheet (see Luceri column 6).

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17. With respect to Claim 64: it is the examiner's position that a seam is a line, or place of joining. Therefore the backsheet and core or joined using one large adhesive seam.

18. Claims 65, 66, 68, 70 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellenberger (EP 0 339 461) in view of Plischke et al. (5,977,014).

19. Kellenberger, as disclosed above for claim 62, fails to teach the use of a secondary storage layer, that is a soft absorbent, and to where the flowable material is located in between the primary and secondary layers. Plischke discloses the use of two substrate layers, being made of cellulose (column 16, lines 38-40), and to where superabsorbent particles are located in between the two substrate layers (see Figures 7-9). It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have the absorbent matrix of Kellenberger, be separated into two layers, to where the superabsorbent particles are located between the two layers, as disclosed by Plischke, in order to protect the particles against mechanical damage (see Plischke column 5).

20. Claims 80 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellenberger (EP 0 339 461) in view of Jones, Sr. (3,794,034).

21. Kellenberger, as disclosed above for claim 62, fails to teach the flowable material being treated with bacterial, fungicidal, or virudical substance. Jones Sr. teaches the use of a body waste pad that is impregnated with levulinic acid and buffered with NaOH or Na<sub>2</sub>CO<sub>3</sub> (claim 3, and column 3, lines 45-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the absorbent body of Kellenberger, be impregnated with the levulinic acid, as disclosed by Jones Sr., in order to inhibit the formation of embarrassing

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odors by absorbing any free ammonia and amines present in the freshly excreted bodily fluids and also by further inhibiting the rapid formation of ammonia and volatile amine compounds from urea, uric acid, amino acid, and the like by bacterial and enzyme action in the waist fluids (see Jones, Sr. column 1).

22. Claims 97-101 and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellenberger (EP 0 339 461) in view of Reising et al. (4,988,344).

23. With respect to Claim 97 and 101: Kellenberger, as disclosed above for claim 62 and 102, fails to disclose the core comprising two or more chambers with a wall between the chambers. Reising discloses the use of multiple chambers in the core with walls between the chambers (see Figure 10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the core of Kellenberger, have the multiple compartments, as disclosed by Reising, in order to provide improved rates of liquid acquisition because there is reduced interference to liquid flow. (see Reising column 12)

24. With respect to Claims 98-100: Reising disclosed the chambers are square, and therefore have walls that are aligned longitudinally and transversely (see Figure 10).

25. With respect to Claim 106: see Reising Figures 1-8 and reference numerals 56 and 57.

***Allowable Subject Matter***

26. Claims 50-56 and 87-93 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

27. Applicant's arguments filed 10/2/01 have been fully considered but they are not persuasive.

28. With respect to Applicant's argument that Kellenberger does not disclose a flowable material: Kellenberger teaches in Page 6, lines 27-33 of the specification that "When the superabsorbent material of the present invention has a dry size within the defined ranges and does not break apart into smaller units when wetted, it will, upon swelling generally expand such that it maintains a capillary structure in the matrix. That is, rather than expanding to fill the pores, the superabsorbent expands to push the fibers apart." It is the examiner's position that Kellenberger does not disclose that the superabsorbent swell and become lodged in place, but that the fibers move to allow the superabsorbent to expand, therefore the superabsorbent is capable of flowing. Furthermore the claim only states that the material remains flowable after being wetted, if the superabsorbent material of Kellenberger were only wetted with a drop of water then a majority of the superabsorbent material would still be dry, and therefore flowable. The rejection stands as stated above.

29. With respect to Applicant's arguments of all 103 rejections: The applicant has only argued these rejections in so far as they do not provide a flowable material that remains flowable after being wet. As stated above, it is the examiner's position that Kellenberger discloses a flowable material that remains flowable after being wet, therefore the examiners rejections stands as stated above.



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***Conclusion***

30. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

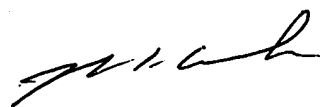
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Webb whose telephone number is (703) 308-8579. The examiner can normally be reached on M-F (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

jaw

November 19, 2001



John G. Weiss  
Supervisory Patent Examiner  
Group 3700